

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

United Communications Systems, Inc.	)	
d/b/a Call One	)	
	)	
Petition for Arbitration of an	)	Docket No. 03-0772
Interconnection Agreement with	)	
Illinois Bell Telephone Company	)	
d/b/a SBC Illinois Pursuant to Section	)	
252(b) of the Telecommunications	)	
Act of 1996	)	

**SBC ILLINOIS' EMERGENCY MOTION TO SUSPEND SCHEDULE**

Illinois Bell Telephone Company d/b/a SBC Illinois ("SBC Illinois"), by its attorneys, respectfully moves that the Commission immediately suspend the schedule in this proceeding. SBC Illinois further requests that the ALJ immediately schedule a status hearing for tomorrow, January 30, 2004, to address this Emergency Motion and the schedule for this proceeding. In support of its Emergency Motion, SBC Illinois states as follows:

1. Earlier today, January 29, 2004, SBC Illinois applied to the Circuit Court of Cook County for a temporary restraining order, as well as a permanent injunction, against defendants United Communications Systems, Inc. d/b/a Call One ("UCS") and its employee and witness Mr. Ronald Lambert enjoining Mr. Lambert from participating in this arbitration proceeding. As explained in SBC Illinois' pleadings filed with the Circuit Court (attached hereto as Attachment A), Mr. Lambert's participation in this arbitration, as well as his participation as a lead negotiator in the negotiations conducted between UCS and SBC Illinois, are in violation of Illinois' Rules of Professional Conduct.

2. Mr. Lambert, an attorney, formerly represented SBC and helped formulate SBC's policies regarding the resale of individual case basis contracts ("ICBs"). Mr. Lambert, without SBC's consent, is now representing UCS in opposing SBC's ICB policies in negotiations with

SBC and in this arbitration. His participation in this proceeding is in direct violation of Illinois Rule of Professional Conduct 1.9, which provides:

(a) A lawyer who has formerly represented a client in a matter shall not thereafter:

(1) represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client, unless the former client consents after disclosure; or

(2) use information relating to the representation to the disadvantage of the former client, unless:

(A) such use is permitted by Rule 1.6; or

(B) the information has become generally known.

3. From 1996 to late 1999, Mr. Lambert was employed by SBC as in-house counsel, where his primary responsibilities included rendering confidential legal advice regarding the interpretation and implementation of the resale provisions of the 1996 Act and the FCC's *First Report and Order*, negotiating with CLECs regarding resale and interconnection agreements, and advising SBC personnel regarding resale and interconnection issues involving CLECs. Among other things, Mr. Lambert was involved in formulating SBC's policies regarding the resale of ICBs by CLECs and the disclosure of the terms and conditions of ICBs to CLECs.

4. Some time after resigning from SBC in late 1999, Mr. Lambert began employment with UCS. Since May 2003, UCS and SBC have engaged in negotiations regarding the resale of SBC's services to UCS, during the course of which Mr. Lambert served as one of UCS's lead negotiators against SBC. One subject of the negotiations was the issue of UCS's access to SBC's ICBs, with respect to which Mr. Lambert demanded, among other things, that SBC Illinois grant UCS "immediate access to such ICBs." UCS Arbitration Petition, Exhibit E. This position is directly adverse to the position Mr. Lambert helped formulate for SBC Illinois when he represented SBC, and is directly adverse to SBC Illinois' current position.

5. Despite numerous formal requests from SBC Illinois that Mr. Lambert refrain from participating in negotiations on behalf of UCS, Mr. Lambert continued that participation. Now, Mr. Lambert has sponsored testimony in this arbitration on behalf of UCS that in substantial part addresses ICBs. Mr. Lambert's participation in this arbitration, like his participation in the negotiations, violates Rule 1.9. Arbitration Issues 1 through 4 relate directly to the resale of SBC Illinois' ICBs by UCS, and UCS's access to the terms and conditions of SBC's ICBs, and thus the issues UCS raises in its arbitration petition are more than substantially related to Mr. Lambert's prior representation of SBC Illinois. Moreover, based on his prior representation of SBC Illinois, Mr. Lambert was privy to confidential information concerning SBC Illinois' resale policies and positions, the disclosure of which would give UCS an unfair advantage in the arbitration.

6. Because Mr. Lambert's actions violate Illinois' Rules of Professional Conduct and violate SBC Illinois' right to prohibit its former attorney from representing an adverse party in a substantially related matter and to have its attorney-client confidences preserved and not disclosed or used against it by its former attorney, SBC Illinois' has been forced to pursue legal action against UCS and Mr. Lambert, suing in the Circuit Court for injunctive relief.

7. Further, and for the same reasons, SBC Illinois also filed today in this docket a motion to strike the testimony sponsored in part by Ronald Lambert, filed by UCS on January 27, 2004, and to disqualify Mr. Lambert from further participation in this proceeding. As noted in SBC Illinois' Motion to Strike and to Disqualify, the Commission should strike Mr. Lambert's

testimony<sup>1</sup> and disqualify Mr. Lambert from further participation in this proceeding, in order to prevent further and continuing violation of Illinois' Rules of Professional Conduct.

8. SBC Illinois requests that the Commission immediately suspend the schedule in this arbitration proceeding pending the determination of both SBC Illinois' Circuit Court action and its Motion to Strike and to Disqualify filed in this docket. As explained further below, requiring SBC Illinois to proceed under the current schedule while these matters are pending would unduly prejudice SBC Illinois, would unduly complicate this proceeding, and would lead to needless waste of significant resources of the Commission and SBC Illinois.

9. The Commission has a clear interest in expecting the persons that appear before it to adhere to Illinois' Rules of Professional Conduct. Indeed, Section 200.90 of the Commission's rules state:

All persons appearing in proceedings before the Commission shall conform to the standards of conduct of attorneys before the courts of Illinois. These standards are set forth in the Illinois Rules of Professional Conduct. If any person does not conform to such standards, the Hearing Examiner may decline to permit such person to appear in any proceeding. 83 Ill. Admin. Code § 200.90(e) (citation omitted).

10. Because the Commission has a responsibility to ensure that those appearing before it – including attorneys that sponsor testimony – adhere to the Illinois Rules of Professional Conduct, and in accordance with the public policy expressed in Commission Rule 200.90, the Commission should immediately suspend the schedule in this proceeding pending the determination of the propriety of UCS's and Mr. Lambert's conduct.

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<sup>1</sup> Because Mr. Lambert submitted testimony jointly with two other witnesses (Craig Foster and Chris Surdenik), SBC Illinois cannot determine which portions of that Joint Testimony are sponsored by Mr. Lambert and which portions are sponsored by the other two witnesses. Thus, in its Motion to Strike, SBC Illinois requests that the Commission strike the Joint Testimony in its entirety, subject to resubmission by UCS with those portions sponsored by Mr. Lambert excised.

11. Further, requiring SBC Illinois to proceed under the current schedule, which requires SBC Illinois to submit testimony responding to UCS's testimony on Tuesday, February 3, 2004, would unduly prejudice SBC Illinois. If the schedule is not immediately suspended, SBC Illinois will be forced to submit testimony responding to the entirety of UCS's 167-page Joint Testimony, including the indeterminable but likely substantial portion of that testimony that is sponsored by Mr. Lambert and which should be stricken. Moreover, if the current schedule is not immediately suspended, SBC Illinois will also be forced to submit testimony responding to the very significant portions of UCS's Joint Testimony which should be stricken for other reasons, identified in SBC Illinois' Motion to Strike and to Disqualify.

12. In addition, SBC Illinois will be prejudiced insofar as, if SBC Illinois prevails in its Circuit Court action and/or its Motion to Strike and to Disqualify, UCS will be required to withdraw its Joint Testimony and may thereafter submit testimony that differs in scope or substance. SBC Illinois has developed and is developing its positions in this arbitration, as well as the list of issues that it intends to present to the Commission for arbitration, based upon the entirety of UCS's Petition for Arbitration and its supporting testimony, including, most significantly, the Joint Testimony sponsored by Mr. Lambert. To the extent that UCS's own positions and/or testimony undergo modification if Mr. Lambert is disqualified from participating in this proceeding or using confidential information he gained while an attorney at SBC to assist UCS in the arbitration, SBC Illinois' own positions, list of arbitration issues, and/or testimony may also require revision.<sup>2</sup>

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<sup>2</sup> For the same reason, SBC Illinois intends to seek leave and reserves its right to withdraw its Response to UCS's Petition for Arbitration, filed today, January 29, 2004, and to re-submit a modified Response, if necessary, should UCS submit a modified Petition for Arbitration or modified testimony.

13. Proceeding under the current schedule could also result in a significant waste of resources. As noted above, the determination of SBC Illinois' Circuit Court action for injunctive relief and/or its Motion to Strike and to Disqualify could result in the withdrawal of UCS's testimony. If that occurs, then SBC Illinois' own testimony must also be withdrawn, until such time as UCS submits revised testimony and SBC Illinois can revise its reply testimony in turn. There is little to be gained, and much to be lost, from requiring SBC Illinois to proceed to file testimony that very likely will require withdrawal and revision. Rather, the Commission should simply suspend the schedule of this proceeding until the dust settles.

WHEREFORE, for the reasons set forth above, the Commission should grant SBC Illinois' Emergency Motion to Suspend Schedule, and immediately suspend the schedule in this proceeding pending the determination of SBC Illinois' Circuit Court action and its Motion to Dismiss and to Disqualify.

Dated: January 29, 2004

Respectfully submitted,

**SBC ILLINOIS**

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